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BRETT L. SCOTT

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

	)	CASE NO. 2:13-cv-00433-LDG-CWH
	)	Base File
In Re:	)	
	)	<b>STIPULATION AND [PROPOSED]</b>
SPECTRUM PHARMACEUTICALS, INC.,	)	<b>ORDER GOVERNING</b>
SECURITIES LITIGATION	)	<b>CONFIDENTIALITY</b>
	)	
	)	
	)	

**STIPULATION**

IT IS HEREBY STIPULATED AND AGREED, by and among the parties hereto, through their undersigned counsel, that the following provisions of this Stipulation and [Proposed] Order Governing Confidentiality (the “**Order**”) shall govern disclosure and use by the parties of all documents, testimony, exhibits, interrogatory answers, responses to requests to admit and any other materials and information disclosed or provided in the above-referenced action (the “**Action**”).

**1. ALL INFORMATION TO BE USED ONLY FOR THIS ACTION**

All information produced or disclosed in the Action shall be used solely for the prosecution or defense (including any appeal therefrom) of the Action and shall not be used for any other purpose.

**2. DEFINITIONS**

When used in this Order, the term:

(a) “**Confidential Information**” shall mean all documents and testimony, and all information contained therein, containing:

(i) trade secrets or other confidential research, development, financial, proprietary or commercial information that may be subject to a protective order under FRCP 26(c)(1)(G); or

(ii) confidential, non-public personal information that is protected from disclosure by statute, regulation or otherwise.

(b) “**Disclosing Party**” shall refer to any party to this Action and any non-party disclosing or producing Confidential Information in connection with this Action.

(c) “**Discovery Material**” shall refer to all items or information that are produced or generated in disclosures or responses to discovery in this Action, regardless of the medium or manner in which it was stored, generated or maintained.

(d) “**document**” shall have the same meaning as provided in Rule 34 of the Federal Rules of Civil Procedure, and shall include, without limitation, all original, written,

1 recorded, electronic or graphic materials, and all copies, duplicates or abstracts thereof  
2 including, but not limited to, notes on documents including information contained therein or  
3 derived therefrom.

4 (e) “**Receiving Party**” shall refer to any party to this Action and any non-party  
5 that receives Confidential Information.

6 **3. DISCLOSURE OF CONFIDENTIAL INFORMATION**

7 (a) Unless otherwise ordered by the Court or permitted in writing by the  
8 Disclosing Party, a Receiving Party may disclose Confidential Information only to:

- 9 (i) counsel of record in this Action, as well as counsel’s employees to  
10 whom it is reasonably necessary to disclose the information in  
11 connection with this Action;
- 12 (ii) the named parties and Court-appointed class representatives including  
13 in-house counsel, officers, directors and employees of the Receiving  
14 Party to whom disclosure is reasonably necessary for this Action;
- 15 (iii) experts, consultants or investigators including their staff who have  
16 signed the Acknowledgment attached hereto as Exhibit A;
- 17 (iv) outside photocopying, microfilming or database service providers, trial  
18 support firms, graphic production services, litigation support services,  
19 and translators engaged by the parties during this Action to whom  
20 disclosure is reasonably necessary for this Action and who have signed  
21 the Acknowledgment attached hereto as Exhibit A;
- 22 (v) the Court, any court to which a party petitions for discovery of a non-  
23 party, any appellate court, necessary court personnel and jurors;
- 24 (vi) court reporters and their staff, stenographers or video operators,  
25 professional jury or trial consultants, mock jurors and professional  
26 vendors to whom disclosure is reasonably necessary for this Action;
- 27 (vii) during their depositions and deposition preparation, witnesses in the  
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Action to whom disclosure is reasonably necessary and who have signed the Acknowledgment attached hereto as Exhibit A (although such individuals shall not be permitted to retain any copies);

(viii) any mediator or arbitrator engaged by the named parties in connection with this Action;

(ix) the author or recipient of a document containing the Confidential Information or a custodian or other person who otherwise possessed or knew the information; and

(x) other persons only after notice to all parties and upon order of the Court, or upon written consent of the Disclosing Party.

(b) Confidential Information shall not be shared with any individual, party, expert witness, consultant, or counsel in any other legal proceeding or action.

#### **4. HIGHLY CONFIDENTIAL DOCUMENTS**

A Disclosing Party may designate “**Highly Confidential Information**” under the terms of this Order if such party in good faith reasonably believes that disclosure of the Highly Confidential Information to persons identified in Paragraph 3(a)(ii) or 3(a)(iv) is substantially likely to cause injury to the Disclosing Party. Unless otherwise ordered by the Court or permitted in writing by the Disclosing Party, a Receiving Party may not disclose Highly Confidential Information to persons identified in Paragraph 3(a)(ii) and 3(a)(iv).

#### **5. AFFIXING CONFIDENTIALITY DESIGNATIONS**

Designation of documents or other material as containing Confidential or Highly Confidential Information as set forth in Paragraphs 3 and 4 of this Order may be made at or prior to the time of production of documents by stamping or otherwise affixing the legend “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” on each page deemed Confidential or Highly Confidential, respectively, in a manner that does not interfere with the legibility of the document. When Confidential or Highly Confidential Information is disclosed in a form

not appropriate for such placing or affixing, such Confidential or Highly Confidential Information shall be designated as Confidential or Highly Confidential in writing at the time it is delivered to the Receiving Party.

**6. CONFIDENTIAL DEPOSITION TESTIMONY**

(a) A Disclosing Party may designate as Confidential or Highly Confidential any portion of a transcript from a deposition or a transcript from other pretrial or trial proceedings deemed to contain such material. The Disclosing Party shall advise the court reporter and counsel of record of the testimony containing Confidential or Highly Confidential Information (“**Confidential Testimony**”) either orally at the deposition or in writing no later than 30 calendar days after receipt from the court reporter of the final deposition transcript. During such 30-day period, the parties shall treat the entire transcript as Confidential. The reporter shall mark CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY” on the face of the transcript at the beginning and end of any portions of Confidential Testimony. Transcripts containing Confidential Testimony shall have an obvious legend on the title page that the transcript contains Confidential or Highly Confidential Information, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Confidential or Highly Confidential. At the request of any party, the court reporter shall prepare a separate, original transcript that does not contain the Confidential Testimony.

(b) The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY.”

**7. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

Each expert, advisor, consultant, fact witness or potential fact witness who receives Confidential or Highly Confidential Information shall be shown a copy of this Order and be advised of its contents. Each such individual shall execute the written acknowledgement

1 attached hereto as Exhibit A.

2 **8. MAINTENANCE OF CONFIDENTIAL MATERIALS**

3 Any person or entity in possession of Confidential or Highly Confidential  
4 Information shall maintain those materials in a reasonably secure manner, and shall not  
5 reveal or discuss such information to or with any person not entitled to receive it, so that the  
6 Confidential or Highly Confidential Information is not further disclosed or used in any  
7 manner inconsistent with this Order. The protections conferred by this Order cover not only  
8 the protected information itself, but also any information copied or extracted therefrom, as  
9 well as copies, excerpts, summaries or compilations thereof, plus testimony, conversations or  
10 presentations by parties or counsel to or in court or in other settings that might disclose  
11 protected material to persons not authorized to receive such material.

12 **9. UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION**

13 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
14 Confidential or Highly Confidential Information to any person or in any circumstance not  
15 authorized under this Order, the Receiving Party must immediately (a) notify in writing the  
16 Disclosing Party of the unauthorized disclosures; (b) use its best efforts to retrieve all  
17 unauthorized copies of the Confidential or Highly Confidential Information; (c) inform the  
18 person or persons to whom unauthorized disclosures were made of all the terms of this  
19 Order; and (d) request such person or persons to execute the Acknowledgment that is  
20 attached hereto as Exhibit A.

21 **10. CONFIDENTIAL INFORMATION AND SUBPOENAS**

22 (a) If a Receiving Party is served with a subpoena or a court order issued in  
23 another litigation or an investigation that compels disclosure of any Confidential or Highly  
24 Confidential Information, that Receiving Party must: (i) promptly notify in writing the  
25 Disclosing Party and provide it with a copy of the subpoena or court order; (ii) promptly  
26 notify in writing the individual or entity who caused the subpoena or order to issue in the  
27 other litigation or investigation and provide it with a copy of this Order; and (iii) cooperate  
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1 with respect to all reasonable procedures pursued by the Disclosing Party whose Confidential  
2 Information may be affected.

3 (b) The Disclosing Party must notify the Receiving Party within 7 calendar days  
4 of receiving the notice and accompanying information if it intends to seek a protective order  
5 from the court to avoid disclosure of the Confidential or Highly Confidential Information. If  
6 the Disclosing Party timely seeks a protective order, the Receiving Party served with the  
7 subpoena or court order shall not produce any Confidential or Highly Confidential  
8 Information before a determination by the court from which the subpoena or order issued,  
9 unless the Disclosing Party consents to such production in writing. The Disclosing Party  
10 shall bear the burden and expense of seeking protection of its Confidential or Highly  
11 Confidential Information in the court that issued the subpoena or court order.

12 (c) Nothing in these provisions should be construed as authorizing or encouraging  
13 a Receiving Party in this Action to disobey a lawful directive from another court.

14 **11. INADVERTENT FAILURE TO DESIGNATE AS CONFIDENTIAL**

15 Inadvertent failure to designate materials as Confidential or Highly Confidential at  
16 the time of production may be remedied by supplemental written notice by the Disclosing  
17 Party. The Disclosing Party must notify the Receiving Party within 30 calendar days after  
18 discovering that it inadvertently failed to designate the information as confidential. If such  
19 notice is given, all documents, materials or testimony so designated shall be subject to this  
20 Order as if they had been initially designated as Confidential to the extent that such  
21 documents, materials or testimony fall within the definition of Confidential or Highly  
22 Confidential Information. Therefore, the Receiving Party should notify any non-party to  
23 whom disclosure was made about the confidentiality designation.

24 **12. INADVERTENT PRODUCTION OF PRIVILEGED INFORMATION**

25 (a) The inadvertent or unintentional production of any Discovery Material shall  
26 not serve to waive any claim that such Discovery Material is protected by the attorney-client  
27 privilege, the work product doctrine, or any other applicable privilege or immunity for  
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1 withholding production either in the this litigation, or pursuant to Federal Rule of Evidence  
2 502(d), in any other federal or state proceeding. Similarly, the inadvertent or unintentional  
3 production of any such Discovery Material shall not waive the Disclosing Party's right to  
4 have that Discovery Material returned, subject to the procedures set forth in Fed. R. Civ. P.  
5 26(b)(5)(B).

6 (b) In the event that a Disclosing Party believes in good faith that a document  
7 subject to attorney-client privilege, work product or other valid privilege or immunity has  
8 been produced inadvertently or unintentionally, counsel shall notify all parties within a  
9 reasonable time after so learning or discovering that such production has been made. Upon  
10 written notice by the Disclosing Party of an inadvertent or unintentional production of  
11 Discovery Material containing such information, each Receiving Party shall make no further  
12 use of the Discovery Material other than to challenge the assertions of privilege under Fed.  
13 R. Civ. P. 26(b)(5)(B). If a Receiving Party disclosed the inadvertently or unintentionally  
14 produced Discovery Material to a third party prior to receiving notice of a claim of privilege  
15 or other inadvertent or unintentional production by the Disclosing Party, that Receiving Party  
16 must take reasonable steps to retrieve the information promptly. The Receiving Party shall  
17 have a reasonable amount of time to challenge any claim of privilege, work product  
18 protection, inadvertence or otherwise and may present the information or document to the  
19 Court under seal for determination of the Disclosing Party's claims. Nothing in this Order  
20 shall alter or waive the standards and burden applicable to any motion concerning privilege  
21 or waiver of privilege. Any copy of such Discovery Material submitted to the Court in  
22 connection with the motion shall be filed under seal in accordance with the terms of this  
23 Order.

24 (c) If a Receiving Party receives information that the Receiving Party believes is  
25 subject to a claim of privilege or protection from discovery, the Receiving Party shall  
26 promptly identify the information to the Disclosing Party.

27 **13. CHALLENGING A CONFIDENTIALITY DESIGNATION**  
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1 If a party objects to a designation of Confidential or Highly Confidential Information  
2 under this Order, the objecting party shall notify the Disclosing Party in writing. Within 14  
3 calendar days of receipt of such notification, counsel for the disclosing party and the  
4 objecting party shall meet and confer in a good faith effort to resolve any disagreement  
5 regarding the Disclosing Party's designation of the Confidential or Highly Confidential  
6 Information. If, for whatever reason, the parties do not resolve their disagreement within that  
7 time period, the objecting party may, within a reasonable time, file and serve a motion with  
8 the Court for resolution of the dispute. The documents subject to that motion will be treated  
9 as Confidential or Highly Confidential until the Court rules. Nothing in this Order shall be  
10 construed as preventing any party from objecting to the designation of any documents as  
11 Confidential or Highly Confidential or preventing any party from seeking further protection  
12 for any material it produces in discovery. Nothing herein shall be deemed to change the  
13 burdens of proof established by applicable law.

14 **14. FILING CONFIDENTIAL INFORMATION**

15 Without written permission from the Disclosing Party or a court order secured after  
16 appropriate notice to all interested persons, a Receiving Party may not file in the public  
17 record in this Action any Confidential or Highly Confidential Information. However, this  
18 Order does not, by itself, authorize the filing of any document under seal. Any party wishing  
19 to file Confidential or Highly Confidential Information in connection with a motion, brief or  
20 other submission to the Court must comply with Local Rule of Civil Practice 10-5.

21 **15. DISPOSING OF CONFIDENTIAL INFORMATION**

22 (a) Within 30 calendar days after the final disposition of this Action, including  
23 any appeals, each Receiving Party must either return all Confidential or Highly Confidential  
24 Information to the Disclosing Party or destroy such material, including all copies, abstracts,  
25 compilations, summaries, and any other form in which the Confidential Information may  
26 have been reproduced or captured.

27 (b) Whether the Confidential or Highly Confidential Information is returned or  
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1 destroyed, the Receiving Party must submit a written certification to the Disclosing Party by  
2 the 30-day deadline that (i) identifies (by category, where appropriate) all the Confidential or  
3 Highly Confidential Information that was returned or destroyed and (ii) affirms that the  
4 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other  
5 format reproducing or capturing any of the Confidential Information.

6 (c) Notwithstanding the above, counsel for the Receiving Party may retain an  
7 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
8 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
9 product and consultant and expert work product, even if such materials contain Confidential  
10 or Highly Confidential Information. Any such archival copies that contain or constitute  
11 Confidential or Highly Confidential Information remain subject to this Order.

## 12 **16. NON-PARTY DOCUMENT PRODUCTIONS**

13 The parties to this Action may designate information produced by non-parties as  
14 Confidential or Highly Confidential as consistent with the terms and provisions of this Order.

## 15 **17. USE OF INFORMATION AT TRIAL**

16 Prior to trial, the parties shall meet and confer regarding the submission of a joint  
17 proposal to the Court with respect to the treatment of Confidential or Highly Confidential  
18 Information.

## 19 **18. CONFIDENTIALITY DESIGNATIONS ARE NOT AN ADMISSION**

20 (a) Nothing in this Order or any designation of confidentiality hereunder, or any  
21 failure to make such designation, shall be used or characterized by any party as an admission  
22 by a party or a party opponent.

23 (b) The parties agree that a designation of information as Confidential or Highly  
24 Confidential is not intended to be and shall not be construed as an admission that the  
25 Confidential or Highly Confidential Information is relevant, nor subject to an applicable  
26 privilege or protection or reasonably calculated to lead to the discovery of admissible  
27 evidence.  
28

(c) Nothing in this Order shall be deemed an admission that any particular Confidential or Highly Confidential Information is entitled to protection under this Order, Fed. R. Civ. P. 26(c) or any other law.

**19. MISCELLANEOUS**

(a) Nothing in this Order shall be construed as limiting a Disclosing Party's use of its own Confidential or Highly Confidential Information.

(b) The treatment accorded under this Order shall survive the termination of this Action.

(c) This Order shall not prevent any party from applying to the Court for further or additional protective orders, for the modification of this Order, or from agreeing with the other parties to modify this Order, subject to the Court's approval.

DATED: June 4, 2015

STRADLING YOCCA CARLSON & RAUTH,  
P.C.

By: /s/ Aaron Humes

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1 DATED: June 4, 2015

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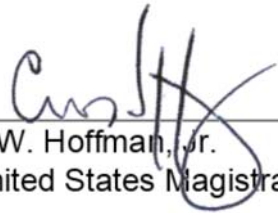
18 *ARKANSAS TEACHER RETIREMENT*  
19 *SYSTEM*

\* \* \*

**ORDER**

IT IS SO ORDERED.

DATED: June 5, 2015

  
C.W. Hoffman, Jr.  
United States Magistrate Judge

**EXHIBIT A**

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

In Re: ) CASE NO. 2:13-cv-00433-LDG-CWH  
 ) Base File  
 )  
 )  
 SPECTRUM PHARMACEUTICALS, INC., )  
 SECURITIES LITIGATION )  
 )

**ACKNOWLEDGEMENT**

I, \_\_\_\_\_, declare that:

1. I have received a copy of the Stipulation and Order Governing Confidentiality (the “**Order**”) in this Action.
2. I have carefully read and understand the provisions of the Order and I agree to abide by its terms.
3. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Order, and will not copy or use for purposes other than for this Action any information designated “Confidential” or “Highly Confidential” that I receive in this Action, except to the extent that such information designated “Confidential” or “Highly Confidential” is or becomes public domain information or otherwise is not deemed “Confidential” or “Highly Confidential” in accordance with the Order.
4. I agree that at the conclusion of the litigation, I will return all confidential information to the party or attorney from whom I received it.
5. I agree to subject myself personally to the jurisdiction of this Court for the purpose of proceedings relating to my performance under, compliance with or violation of the Order.
6. I understand that disclosure of information designated “Confidential” and “Highly Confidential” in violation of the Order may constitute contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature

**CERTIFICATE OF SERVICE**

I hereby certify that on June 4, 2015, I electronically filed the foregoing Stipulation and [Proposed] Order Governing Confidentiality with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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By: /s/ Aaron Humes

Aaron Humes, Esq.